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U.S. Court of Appeals

MENTAL HEALTH Emergency Confinement

Where patient voluntarily submits to hospitalization for mental illness, emergency confinement as involuntary patient is illegal and void.

In Re: Curry, Patient, U.S. App. D.C. No. 71-1798, August 21, 1972. Opinion per Bazelon, C.J. (Fahy and Leventhal, JJ., concur). Robert J. Golten for appellant. James F. Flanagan with Thomas A. Flannery and John A. Terry for appellee. Trial Court—Corcoran, J.

BAZELON, C.J.: In an earlier opinion we considered only one of the issues arising from petitioner's involuntary confinement at St. Elizabeths Hospital. Following his hospitalization as an emergency patient, petitioner raised a number of difficult contentions concerning the procedures which had been invoked to authorize his commitment and concerning what he termed an absence of any meaningful program of treatment during the period of his confinement. We considered first the argument that petitioner had a right to treatment even during the period of emergency hospitalization, and held on October 19, 1971, that the "overall therapeutic process—which begins with observation and diagnosis to determine whether treatment is required—must be initiated as soon as the period of involuntary hospitalization begins." In resolving this question at the outset, we hoped to insure that during our consideration of the remaining questions Curry would either be participating in a program of diagnosis and treatment (which is, after all, the assumption on which the power of civil commitment purports to rest), or that he would no longer be subject to involuntary and pointless hospitalization. Accordingly, we turn now to the remaining contentions.

Curry's protracted skirmish with St. Elizabeths Hospital began on September 27, 1971, when he appeared at the George Washington University Hospital, stating that he heard voices in his head telling him to "go die," and "leave," and complaining of electric

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U.S. District Court

INFORMATION ACT Investigatory Files

Peers Commission Report on MyLai incident held exempt from production under Freedom of Information Act as investigatory files and intra-agency documents.

Aspin v. Department of Defense, Dist. Ct. D.C., Civil No. 632-72. August 22, 1972. Opinion per Pratt, J.

PRATT, J.: Plaintiffs brought this suit under the Public Information Section of the Administrative Procedure Act, 5 U.S.C. §552, popularly known as the Freedom of Information Act, to compel the Secretary of the Army to release a report entitled: "Department of the Army Review of the Preliminary Investigation into the MyLai Incident," more commonly referred to as the "Peers Commission Report." The matter is before the Court on cross-motions for summary judgment which have been fully briefed. Having reviewed the pleadings and affidavits which comprise the record in this case, the Court finds that defendants' motion for summary judgment should be granted.

The documents sought are investigatory files compiled for law enforcement purposes and are exempt from disclosure because of specific exemptions provided in the Freedom of Information Act. 5 U.S.C. §552(b)(7). The documents consist of forty-two bound books organized into four volumes. Volume I has twelve chapters and contains the actual Report of Investigation. It summarizes the nature and purpose of the Peers Inquiry, the evidence uncovered, an analysis of those factors which contributed to the Son My incident, a statement of conclusions regarding the suppression of evidence, and various findings and recommendations made by the Peers Commission which are interspersed throughout the volume. Several chapters from Volume I were released to the public in March, 1970, with minor deletions. Volume II consists of verbatim transcripts of witness testimony. Volume III consists of documentary

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D.C. Court of Appeals

CRIMINAL LAW & PROCEDURE Arrest

Police had no probable cause to arrest for failing to pay taxi cab fare where defendant was attempting to raise money at time of arrest.

United States v. Brown, D.C. App. No. 6129, August 25, 1972. Affirmed per Reilly, C.J. (Gallagher and Pair, JJ., concur). Richard L. Cys with Harold H. Titus, Jr., John A. Terry and William J. Hardy for appellant. Joan M. McIntyre, appointed by this court, for appellee. Trial Court—Bacon, J.

REILLY, C.J.: In this case, the Government appeals from an order granting a motion to suppress the contents of a handbag taken from a young woman—appellee here—and examined by a police officer at a precinct station where she was being held on a charge of failing or refusing to pay a taxicab fare. The officer found certain narcotic instruments in the bag. This discovery was the basis of an information subsequently drawn, charging appellee with possession of the implements of a crime. In granting the pretrial motion, the court below found that although there was probable cause for arrest and that the seizure of the handbag was proper—a reasonable precaution to prevent the arrestee from taking out a possible concealed weapon—appellee's rights were infringed by the subsequent opening and search of the purse. We affirm the order to suppress but for different reasons.

Although the Government is the party appealing the suppression order, appellee in oral argument contended that the court's finding of probable cause for arrest cannot be supported. The

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TABLE OF CASES

CA6075-72 Natl. Bank of Wash. v. John W. Austin, et al. Note. Default judg., $4,166.00. I. B. Yochelson

CA6336-72 Capitol Furn. & Appl. Co. v. Wilbert L. McIlwain, et al. Debt. Default judg., $1,379.00. D. S. Greene

CA9667-71 N.B.S.-H.D.L. FCU v. Addison C. Fair. Note. Default judg., $2,194.75. Protas, Kay & Spivok

CA10278-71 State Farm Mutual Ins. Co., et al. v. Robt. Burton, Jr. Dism. w/prej.

CA3556-72 Soilo C. Mesina v. Hertz. Dism. w/prej.

CA5671-72 May Co. v. Vivian E. Jenkins. Debt. Default judg., $1,429.18. Wolpoff & Abramson

CA5675-72 May Company v. Gaither T. Propst. Debt. Default judg., $1,040.12. Wolpoff & Abramson

ARREST

(Contd. from p. 1953, Col. 3)

validity of the regulation which makes a failure as well as a refusal to pay a taxicab fare illegal was not challenged by appellee. We note that a similar regulation relating to the payment of fares on a public bus, Order No. 3345 of the Public Utilities Commission, was recently held beyond the power of the Commission to promulgate. District of Columbia v. Jones, D.C. App., 287 A.2d 816 (1972). Corrective action was immediately taken by the District Commissioner and Council in the enactment of an ordinance. The taxicab regulation in question, §305-14, seems to stand on firmer footing, however. It derives from P.U.C. Order No. 1208 which was promulgated jointly by the Commission and the D.C. Board of Commissioners on November 15, 1933. After such Board was abolished by Reorganization Plan No. 3 and its powers transferred to the Commissioner and the Council, this section was included by the successor bodies in the compilation of "D.C. Rules and Regulations" published in the D.C. Register pursuant to D.C. Code 1967, §§1-1504 and 1507 (Supp. IV, 1971).

We have some difficulty with the court's ruling that there was probable cause to arrest appellee at the time this was done. Unless the failure of a cab passenger to pay the requisite fare is willful, a criminal violation of this kind of regulation cannot be established. Parry-Hill v. District of Columbia, D.C. App., 291 A.2d 505 (1972). It would seem to follow that where a person charged with a breach of such regulation appears to be making an attempt to raise the necessary fare, an arrest is premature as the element of scienter is lacking. Even according to the arresting officer, appellee did avail herself of a telephone to call for financial assistance and while she may have been bickering with the cabdriver while dialing, the record indicates that the primary reason the officer interrupted her efforts and placed her under arrest was due to the arrival of other persons at the station and the necessity of giving them his attention. Under the circumstances, we find appellee's precipitous detention unreasonable.

The Government, in appealing the order granting the motion to suppress, argues that such order disregarded controlling case law in this jurisdiction, citing inter alia Bailey v. United States, D.C. App., 279 A.2d 508 (1971), where virtually the same objection to a search of a handbag was considered and rejected. In view of our disposition of the case now before us, we need not pass upon this issue, except to observe that the broad rule with respect to the scope of search and seizure incidental to a lawful arrest enunciated by this court in Burroughs v. United States, D.C. App., 236 A.2d 319, 321-22 (1967), was quoted with approval in United States v. Bynum, D.C. App., 283 A.2d 649 (1971). This decision was handed down after the effective date of the Judicial Reorganization Act. See also Jones v. United States, D.C. App., 282 A.2d 561 (1971); United States v. Dyson, D.C. App., 277 A.2d 658 (1971); United States v. Hobby, D.C. App., 275 A.2d 235 (1971); and United States v. Cumberland, D.C. App., 262 A.2d 341 (1970).

FILES

(Contd. from p. 1953, Col. 2)

evidence, and Volume IV contains statements taken by Army criminal investigators, either as part of related criminal proceedings or as part of the Peers investigation. See, Affidavit of Mr. Bland West.

The applicable test for determining whether the investigatory files exemption applies to particular documents is

stated in Bristol-Myers Co. v. F.T.C., 138 U.S. App. D.C. 22, 26, 424 F.2d 935, 939 (1970), cert. denied, 400 U.S. 824. The test is whether the files sought relate to anything that can fairly be characterized as an enforcement proceeding. The affidavits of Mr. Robert Berry, General Westmoreland, and Colonel George Ryker clearly indicate that the Report was in fact the basis for the bringing of charges under the Code against both officers and enlisted men. Because the documents which plaintiffs seek figured prominently in the initiation of subsequent court-martial proceedings, they meet the test of Bristol-Myers. Furthermore, at least one of these proceedings, that involving Lieutenant Calley, is still on appeal.

An additional reason for exempting the Report from public disclosure is the specific exemption in the Freedom of Information Act which exempts from mandatory release inter-agency or intra-agency documents which would not be available by law to a party other than an agency in litigation with the agency. 5 U.S.C. §552(b)(5). It is well-established that this exemption is designed to protect findings and recommendations prepared by a subordinate in order to inform and advise a superior. Ackerly v. Ley, 137 U.S. App. D.C. 133, 138, 420 F.2d 1336, 1341 (1969). The affidavit of Mr. Bland West, describing the documents desired by the plaintiffs, shows that Volume I of the Peers Report falls within the terms of this exemption because that volume consists principally of internal working papers in which opinions are expressed and policies formulated and recommended. In the Court's opinion the other volumes are appendices to Volume I and should share the same protection accorded that volume.

For the above reasons, the Court hereby grants defendants' motion for summary judgment.

CONFINEMENT

(Contd. from p. 1953, Col. 1)

devices in his head which were controlling his behavior. The events which led up to Curry's hospitalization at St. Elizabeths were described briefly in our earlier opinion:

> After interviewing Curry, a doctor at the hospital advised him, for reasons that the papers before us do not make entirely clear, that he could not be admitted for treatment at George Washington. The doctor further suggested that he file an application for treatment at St. Elizabeths, which Curry was unwilling to do. The doctor then executed an application for emergency hospitalization,